

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF NORTH CAROLINA
WESTERN DIVISION
5:09-CV-00359-FL

ANITA THOMAS,

Plaintiff,

v.

CUMBERLAND COUNTY SCHOOLS,
VANSTORY HILLS ELEMENTARY
SCHOOL, BETTY MUSSELWHITE,
PRINCIPAL,

Defendants.

**MOTION FOR *IN CAMERA* REVIEW
AND LEAVE TO FILE
DOCUMENT UNDER SEAL**

NOW COMES Lee L. Tart Malone, Esq., pursuant to the Court's December 7, 2010 Order in the above-captioned case, and moves the Court for *in camera* review of her Declaration in Response to Plaintiff's Motion to Reopen Case and for leave to file her Declaration under seal.

In support of this motion, the undersigned shows the Court the following:

1. On May 5, 2010, Plaintiff filed a stipulation of dismissal with prejudice of her pending claims in this action. On December 2, 2010, Plaintiff submitted a motion to reopen the instant case to the Court, which sought to withdraw her earlier stipulation of dismissal. Plaintiff's Motion alleged that the undersigned coerced her into dismissing her claims and that she authorized the undersigned to dismiss such claims only without prejudice.

2. On December 7, 2010, the Court ordered the undersigned to respond to Plaintiff's filing within twenty-one (21) days. In connection with this Motion for *In Camera* Review and Leave to File Document Under Seal, the undersigned has submitted a Declaration in Response to Plaintiff's Motion to Reopen Case (hereinafter "the Declaration").

3. Under Rule 1.6(b)(6) of the Revised Rules of Professional Conduct of the North Carolina State Bar, "a lawyer may reveal information protected from disclosure . . . to the extent

the lawyer reasonably believes necessary . . . to respond to allegations in any proceeding concerning the lawyer's representation of the client." N.C.R.P.C. 1.6(b)(6). Comment 16 to Rule 1.6 further explains that "[i]f the disclosure will be made in connection with a judicial proceeding, the disclosure should be made in a manner that limits access to the information to the tribunal or other persons having a need to know it and appropriate protective orders or other arrangements should be sought by the lawyer to the fullest extent practicable." *Id.*, Comment 16.

4. This Court has previously permitted documents disclosing attorney-client privileged information to be submitted under seal for the Court's *in camera* review. *Republican Party v. Martin*, 136 F.R.D. 421, 428 (E.D.N.C. 1991). As the U.S. District Court for the Western District of North Carolina has recognized, it is appropriate to seal documents that concern the effectiveness of counsel's representation when attorney-client privileged information is likely to be revealed. *United States v. Hill*, 2010 U.S. Dist. LEXIS 9612 (W.D.N.C. Jan. 14, 2010).

5. The undersigned's Declaration reveals confidential information concerning the undersigned's former representation of Plaintiff. Disclosure of this confidential information is reasonably necessary to respond to Plaintiff's allegations; however, it is highly prejudicial to Plaintiff in the instant litigation and may be prejudicial to Plaintiff in related litigation. In addition, certain aspects of this information are sensitive and of a personal nature. Accordingly, the undersigned respectfully requests that the Court conduct an *in camera* review of the undersigned's Declaration, restrict Defendants' access to the Declaration, and accept the Declaration as filed under seal.

6. Pursuant to Local Civil Rule 79.2(e), the undersigned has submitted the Response

in a red envelope, marked with the case caption, case number, a descriptive title of the document, and bearing indication that it is proposed sealed material.

WHEREFORE, the undersigned respectfully requests that the Court conduct an *in camera* review of the undersigned's Declaration in Response to Plaintiff's Motion to Reopen Case, restrict Defendants' access to the Declaration, and accept the Declaration as filed under seal.

Respectfully submitted the 28th day of December, 2010.

TART LAW GROUP, P.A.

s/ Lee L. Tart Malone
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing document was this day served upon the below named counsel by electronic means in accordance with Local Civil Rule 5.3:

Amy Y. Jenkins
McANGUS, GOUDELOCK & COURIE, LLC
78 Wentworth Street, Suite 200
Charleston, SC 2942
Attorney for Defendants

Webster G. Harrison
McANGUS, GOUDELOCK & COURIE, LLC
Post Office Box 30516
Raleigh, NC 27622
Attorney for Defendants

I further certify that I have this day served a copy of the foregoing document by depositing a copy thereof in the United States Mail, postage prepaid, addressed to Plaintiff at the last address known to me:

Anita Thomas
Post Office Box 93
Bunnlevel, NC 28323
Plaintiff

This the 28th day of December, 2010.

s/ Lee L. Tart Malone
Lee L. Tart Malone